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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte GABRIEL WECHTER, ERIC PULSIPHER,
and MAX C. KNEES

Appeal 2009-006106
Application 10693965
Technology Center 2100

Before LANCE LEONARD BARRY, ELENI MANTIS MERCADER, and CARL W. WHITEHEAD JR., *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

STATEMENT OF THE CASE

The Patent Examiner rejected claims 1-23. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

INVENTION

The Appellants describe the invention at issue on appeal as follows.

> An exemplary method for managing a discovery-related process in a network, includes identifying topology information of the network using the discovery-related process in an active mode, placing the discovery-related process from the active mode into a standby mode using a management process, monitoring to detect specified events in the network using the management process and then forward the detected specified events to the discovery-related process, and/or monitoring to detect arrival of a predetermined point in time, and placing the discovery-related process from the standby mode into the active mode when the detected specified events exceed a threshold and/or when the predetermined point in time arrives.

(Abstract.)

ILLUSTRATIVE CLAIM

1. A method for managing a discovery-related process in a network, comprising:

identifying topology information of the network using the discovery-related process in an active mode;

placing the discovery-related process from the active mode into a standby mode using a management process;

monitoring to detect specified events in the network using the management process and then forward a count of the detected specified events to the discovery-related process, and/or monitoring to detect arrival of a predetermined point in time; and

placing the discovery-related process from the standby mode into the active mode when the count of the detected specified events exceeds a threshold and/or when the predetermined point in time arrives.

REJECTIONS

Claims 1-22 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,941,350 B1 ("Frazier").

Claim 23 stands rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Pub. No. 2004/0172467 A1 ("Wechter").

CLAIM GROUPING

Based on the Appellants' arguments, we will decide the appeal of claims 1-22 on the basis of claim 1 alone and the appeal of claim 23 separately. *See* 37 C.F.R. § 41.37(c)(1)(vii).

REPRESENTATIVE CLAIM 1

The issue before us is whether the Examiner erred in finding that Frazier detects arrival of a predetermined point in time, as required by representative claim 1.

FINDINGS OF FACT

Frazier describes the part on which the Examiner relies as "a method in a node within network computing system for selecting a master network manager . . . ." (Col. 2, ll. 13-15.)

ANALYSIS

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims. . . . The second step in the analyses requires a comparison of the

properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed.Cir. 2003) (internal citations omitted).

Regarding the first step, the U.S. Court of Appeals for the Federal Circuit "ha[s] consistently interpreted the word 'or' to mean that the items in the sequence are alternatives to each other." *Schumer v. Lab. Computer Sys.*, 308 F.3d 1304, 1311 (Fed.Cir. 2002).

Here, claim 1 recites in pertinent part the following limitations: "monitoring to detect specified events in the network using the management process and then forward a count of the detected specified events to the discovery-related process, *and/or* monitoring to detect arrival of a predetermined point in time." (Emphasis added.) We construe the expression "and/or" as permitting items in an associated sequence to be alternatives of each other. Therefore, we agree with the Examiner that "the claim construction provides either forwarding a count to the discovery related process, monitoring to detect the arrival of a predetermined point in time, or both" (Ans. 9), but does not require both. For the sake of judicial efficiency, we will focus on the monitoring to detect the arrival of a predetermined point in time.

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, the Examiner makes the following "specific and detailed findings," *Ex parte Belinne*, No. 2009-004693, 2009 WL 2477843, at *4 (BPAI Aug. 10, 2009) (informative), about Frazier.

> In the present case, Frazier teaches transitioning from a standby state S2 back to a discovering state S 1 if the master subnet manager does not respond within a defined time out or after a predetermined number of retries ([COL 11 lines 49-63]) Frazier monitors the arrival of a predetermined point in time by detecting the expiration a defined time out and/or a predetermined number of retires prior to effectuating a state transition from a standby mode to a discovery state S1. Since a predetermined point in time, in light of Appellant's instant specification, is reasonably interpreted as one of a defined time out or a predetermined number of retires, it is Examiner's contention that Frazier monitors the arrival of a predetermined point in time (e.g., time out and/or number of retries)[.]

(Ans. 10.)

The reference supports these findings by including the following teachings.

> A subnet manager in standby state S2 periodically sends requests to the subnet manager in the master state and waits for a response to the request. This process is also referred to as polling. . . . If the master subnet manager does not respond within the defined time out . . . a state change occurs in which state machine 800 transitions from standby state S2 back to discovering state SI to begin the discovery process again for selecting another master subnet manager.

(Frazier, Col. 11, ll. 53-64.)

For their part, the Appellants do not address the Examiner's findings. Instead, they merely argue that "*Frazier* does not disclose or suggest 'monitoring to detect specified events in the network using the management process and then forward a count of the detected specified events to the discovery-related process,' as recited in claim 1." (Appeal Br. 5-6.) This argument "do[es] not . . . explain why the Examiner's explicit fact finding is in error." *Belinne*, at *4. Therefore, we conclude that the Examiner in

finding that Frazier detects arrival of a predetermined point in time, as required by representative claim 1.

INDEPENDENT CLAIM 23

The issue before us is whether the Examiner erred in finding that Wechter changes a discovery-related process from an active mode into a standby mode as required by independent claims 23.

FINDINGS OF FACT

Wechter describes its invention as follows.

> An exemplary method for monitoring a network [that] includes detecting changes in the network, and initiating discovery of the topology of the network when a number of the detected changes in the network exceeds a threshold. Another exemplary method includes initiating discovery of the topology of the network when a predetermined time period expires.

(Abstract.)

ANALYSIS

"It is axiomatic that anticipation of a claim under § 102 can be found only if the prior art reference discloses every element of the claim, and that anticipation is a fact question . . . ." *In re King*, 801 F.2d 1324, 1326 (Fed. Cir. 1986) (citing *Lindemann Maschinenfabrik GMBH v. Am. Hoist & Derrick Co.*, 730 F.2d 1452, 1457 (Fed. Cir. 1984)).

Here, Wechter teaches that "rediscovery check module 114 can trigger

itself (as indicated by the loop 146) at periodic intervals (for example, every five minutes, or at any other interval) to check the count of changes or delta events in the network against the threshold." (¶ 0018.)

In view of these teachings, we agree with the Examiner's following findings.

> [P]eriodic triggering of the module implies that a period of active discovery occurs upon being triggered (e.g., at periodic intervals delta events in the network are checked against a threshold, i.e., active mode, paragraph 18.) During this period, the module is in an active, discovery mode. When the module is not triggered, the module is not actively checking delta events in the network against a threshold (e.g., the module is in a standby mode until otherwise triggered).

(Ans. 13.) In other words, while the module is in the standby mode for the five minutes, or other interval, it is waiting to check the count against the threshold.

The Appellants argue that the "rediscovery module is active throughout the process disclosed by Wechter, including a topology discovery operation is occurring." (App. Br. 10.) We do not construe the claim as requiring the module to be turned off, but rather being merely in standby. Waiting for a time interval to expire constitutes being in standby. Therefore, we conclude that the Examiner did not err in finding that Wechter changes a discovery-related process from an active mode into a standby mode as required by independent claims 23.

DECISION

We affirm the rejections of claims 1 and 23 and that of claims 2-22, which fall with claim 1.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1). *See* 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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